

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 27, 2004

GSBCA 16513-RELO

In the Matter of KEITH L. MILLER

Keith L. Miller, Norman, OK, Claimant.

Michael J. Upton, Program Director, Office of Financial Services, Federal Aviation Administration, Oklahoma City, OK, appearing for Department of Transportation.

DANIELS, Board Judge (Chairman).

The Federal Aviation Administration (FAA) demands that an employee repay a relocation benefit which it previously conferred on him. The demand is inappropriate because it is based on a provision of the agency's travel policy which was not promulgated until after the date on which the employee transferred to his new duty station.

Background

Keith L. Miller worked for the FAA in Oklahoma City, Oklahoma. In September 2000, the agency offered him a position at its headquarters in Washington, D.C. When Mr. Miller expressed concern that a move to Washington would cause him financial and personal difficulties because his wife, for job reasons, would have to remain in Oklahoma, the FAA proposed a "flat rate" payment of \$10,000 as an inducement to take the position. Mr. Miller then accepted the position. He moved to Washington and began working there in January 2001. The FAA paid him the \$10,000 it had promised.

By March 2003, Mr. Miller had had enough of the bright lights of headquarters. He requested, and was granted, a hardship transfer back to Oklahoma City. Relocation benefits were not granted for this transfer. Upon arriving in Oklahoma City, Mr. Miller moved back into the home where his wife had remained while he was in Washington.

In July 2003, the FAA demanded that Mr. Miller repay to the agency the \$10,000 it had given him upon his acceptance of the position in Washington. The agency's justification for this demand, as most recently expressed, is based on a reading of two provisions of the FAA Travel Policy (FAATP), sections 302-8.6 and 302-8.16.

Discussion

The FAA has its own travel policy, which applies to that agency's employees. James S. Hartley, GSBCA 16390-RELO (July 22, 2004); Ronald Majtyka, GSBCA 16120-TRAV, 03-2 BCA ¶ 32,388; James W. Respass, GSBCA 15532-RELO, 01-2 BCA ¶ 31,450. Under this policy, relocation benefits may be authorized for agency employees not only when they transfer in the interest of the Government (as for other federal civilian employees), but also when they transfer primarily for their own benefit and the agency determines that it will derive "some benefit" from the move. The rules regulating the latter, distinctive situation are contained in part 302-8 of the FAATP. FAATP 302-2.2, -2.4 (Oct. 15, 1998).

The FAATP provides, "The provisions in effect on [an employee's] effective date of transfer or appointment govern [the employee's] relocation allowances and entitlements." FAATP 302-2.7. Thus, the provisions in effect in January 2001, when Mr. Miller transferred to Washington, governed his relocation allowances and entitlements with regard to that move. Neither of the FAATP provisions on which the agency relies as justification for its demand for repayment of the \$10,000 it gave Mr. Miller on the occasion of that move conveyed any authority to recoup the money. FAATP 302-8.6, as in effect in January 2001, stated:

How do I determine if FAA will derive a benefit from my transfer even though it is not in the interest of the Government?

FAA will state on the vacancy announcement if the relocation is related to a MPP [merit placement program] placement, or on the offer letter if the transfer is related to an IPP [internal placement program] placement, the amount of the benefit it will pay for transferees and new appointees/student trainees.

The FAATP did not contain a provision designated as 302-8.16 in January 2001.

On March 7, 2003, the FAATP was amended to include as FAATP 302-8.6 and 302-8.16 two new provisions. FAATP 302-8.6 now states, "If [an employee] return[s] to [his] old residence and reestablish[es] that home as [his] residence, [he is] not eligible for a fixed relocation payment." (Former FAATP 302-8.6 has been redesignated section 302-8.10.) The new FAATP 302-8.16 says, "[I]f FAA pays [an employee] a fixed relocation payment and [the employee] reestablish[es] [his] old residence as [his] current residence, FAA will collect from [him] the fixed relocation payment." These provisions did not come into being, however, until more than two years after Mr. Miller moved to Washington. Because they were not in effect on the date of that move, they do not govern the allowances and entitlements for the relocation.

Even if the March 2003 rules did apply to this case, we do not believe that they can be fairly read to justify the FAA's demand for repayment of the \$10,000 in question. The payment was made to induce Mr. Miller to relocate from Oklahoma City to Washington. The new rules appear to be designed to prevent an employee from keeping a payment intended to assist in defraying the costs of moving when the employee does not genuinely relocate. Mr. Miller most assuredly did relocate to Washington, where he worked for more than two years. That he incurred costs in doing so should go without saying. The reestablishment of

the employee's residence in Oklahoma was pursuant to an entirely different move, from Washington back to Oklahoma City. He has properly never sought or received any relocation benefits for reestablishing his residence in Oklahoma.

Decision

The FAA may not recoup from Mr. Miller the \$10,000 payment it made to him on the occasion of his reassignment from Oklahoma City, Oklahoma, to Washington, D.C.

STEPHEN M. DANIELS
Board Judge